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January 14, 2005

**DECISION AND ORDER  
OFFICE OF HEARINGS AND APPEALS**

**Hearing Officer's Decision**

Case Name: Personnel Security Hearing

Date of Filing: June 25, 2004

Case Number: TSO-0126

This Decision concerns the eligibility of XXXXXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."<sup>1/</sup> A Department of Energy (DOE) Operations Office tentatively denied the individual's request for an access authorization under the provisions of Part 710. This Decision considers whether, on the basis of the evidence and testimony presented in this proceeding, the individual's access authorization should be granted. As set forth in this Decision, I have determined that the individual's request for a security clearance should be denied at this time.

**I. Background**

The provisions of 10 C.F.R. Part 710 govern the eligibility of individuals who are employed by or are applicants for employment with DOE, contractors, agents, DOE access permittees, and other persons designated by the Secretary of Energy for access to classified matter or special nuclear material. Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the

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<sup>1/</sup> An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to variously in this Decision as an access authorization or security clearance.

common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a).

In this instance, the individual requested a DOE security clearance after gaining employment with a DOE contractor. However, the local DOE security office (DOE Security) initiated formal administrative review proceedings by informing the individual that his access authorization was being denied pending the resolution of certain derogatory information that created substantial doubt regarding his eligibility. This derogatory information is described in a Notification Letter issued to the individual on April 22, 2004, and falls within the purview of potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections h, j and k. More specifically, the Notification Letter alleges that the individual: 1) "has an illness or mental condition which in the opinion of a psychiatrist causes, or may cause, a significant defect in [the individual's] judgment and reliability; 2) "is a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist as alcohol dependent or as suffering from alcohol abuse," and 3) "has used, or experimented with a drug or other substance listed in the Schedule of Controlled Substances." 10 C.F.R. §§ 710.8(h), (j) and (k) (Criterion H, Criterion J and Criterion K, respectively). The bases for these findings are summarized below.

In reference to Criteria H and J, the Notification Letter states that on May 23, 2003, the individual was examined by a DOE consultant psychiatrist (DOE Psychiatrist) who subsequently issued a report setting forth his opinion that the individual has a mental condition, Substance Dependence Alcohol, which causes or may cause, a significant defect in his judgment and reliability. In this regard, the Notification Letter states that on April 23, 1991, the individual was arrested for Driving While Intoxicated (DWI) and Leaving the Scene, pursuant to an incident in which he hit a parked car and left the scene of the accident. With regard to Criterion K, the Notification Letter states that during a Personnel Security Interview (PSI) conducted on March 13, 2003, the individual admitted that he regularly used marijuana for fourteen years, until October 2000. The individual further stated during the PSI that he experimented with speed and cocaine during high school and in his early 20's.

In a letter received by the DOE Office of Hearings and Appeals (OHA) on June 25, 2004, the individual exercised his right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). On June 30, 2004, I was appointed as Hearing Officer. After conferring with the individual and the appointed DOE Counsel, 10 C.F.R. § 710.24, a hearing date was established. At the hearing, the DOE Counsel called the DOE Psychiatrist as DOE Security's sole witness. Apart from testifying on his own behalf, the individual called as witnesses his wife, his counselor, his first and second line supervisors, and a co-worker who is also a close friend. The transcript taken at the hearing will be hereinafter cited as "Tr.". Various documents that were submitted by

the DOE Counsel and the individual during this proceeding constitute exhibits to the hearing transcript and will be cited respectively as "DOE Exh." and "Ind. Exh.."

### Summary of Findings

The following factual summary is essentially uncontroverted. However, I will indicate instances in which there are disparate viewpoints regarding the information presented in the record.

The individual accepted a position with a DOE contractor in August 2002, and was required to obtain a security clearance as a condition of his employment. In his Questionnaire for National Security Positions (QNSP), dated August 15, 2002, the individual indicated that in June 1990 (later corrected to be April 1991) he was arrested on a charge of DWI. The individual further stated in his QNSP that he used marijuana 2-3 times per month, from June 1995 to October 2000. After completing its background investigation, DOE Security conducted a PSI with the individual on March 13, 2003, with regard to these matters.

During the PSI, the individual initially explained the circumstances of his arrest on charges of DWI and Leaving the Scene in April 1991. The individual stated that on that evening, he had two to six beers at a tavern after work and then went to a party where he had another four to six beers. The individual admitted that he might have also had a few shots of liquor but could not recall specifically. The individual stated that when driving home from the party he hit a parked car and disabled his vehicle. The individual was attempting to walk home when he was stopped and arrested by the police. The individual ultimately received a \$500 fine and two years probation, and was also required to attend a drug and alcohol awareness class.

The individual further provided information regarding his history of alcohol consumption. According to the individual, he first started experimenting with alcohol when he was fourteen years old. At that age, he drank once a week, usually one or two drinks out of small bottles of liquor. His drinking gradually increased during his teenage years until he reached the legal drinking age which was 18 in the state where he resided. At this point, he drank on an average of twice a week, usually on weekends. However, the individual's drinking increased substantially when he began working full-time at age 20. At his 21<sup>st</sup> birthday party, the individual reportedly consumed seven shots of liquor and ten beers over a four to five hour period. The individual admittedly drank too much during his early 20's which he described as his "early crazier days." However, the individual stated that his drinking tapered off when he got married at age 25 and received the DWI approximately one year later. The individual stated that since 1991, his drinking had fluctuated up and down but had generally diminished. At the time of the PSI, the individual stated that his drinking had diminished to a couple of beers, a couple of nights a week.

Concerning his prior drug use, the individual stated during the PSI that between ages 15 and 21, he used marijuana a couple of times a month, and that he used marijuana on an average of twice a week from age 21 to age 35, until October 2000 when he abruptly stopped using marijuana. The individual stated that he also experimented with speed while in high school and tried cocaine two or three times in his early 20's. According to the individual, he has used no illegal drugs since October 2000.

Following the PSI, the individual was referred by DOE Security to the DOE Psychiatrist. During the psychiatric interview, the individual confirmed and supplemented the information he provided during the PSI regarding his drinking and prior drug use. According to the DOE Psychiatrist's report, the individual acknowledged that he was a heavy drinker in his early 20's and that there were periods of time when he would drink daily and go on "benders" lasting anywhere from three days to three weeks. The individual stated that after he received the DUI in 1991, he began "a long process of trying to wean myself off of heavy drinking." According to the individual, he has experienced a dozen alcoholic blackouts over his life, with the last occurrence in 2000. The individual stated that within the year preceding the psychiatric interview, there were a dozen times when he consumed alcohol above the legal driving limit. However, the individual stated that had been intoxicated on only five occasions during that one year period, with the most recent being at a Super Bowl party in January 2003.

In addition to his psychiatric interview, the DOE Psychiatrist required the individual to submit to a laboratory blood test. The test results indicated that the individual's GGT liver enzyme was substantially elevated, to a level of 154 on a normal scale of 5-75. The DOE Psychiatrist states in his report that he is 95% certain that the individual's elevated GGT liver enzyme is due to his habitual and excessive use of alcohol during the period preceding the psychiatric interview.

On the basis of the information provided by the individual and his GGT level, the DOE Psychiatrist diagnosed the individual with Substance Dependence, Alcohol, in Sustained Full Remission, based upon criteria set forth in *The Diagnostic and Statistical Manual of the American Psychiatric Association, IVth Edition TR (DSM-IV TR)*. According to the DOE Psychiatrist, this is an illness which causes or may cause a significant defect in the individual's judgment or reliability, until such time as the individual is able to demonstrate adequate evidence of rehabilitation or reformation. In this regard, the DOE Psychiatrist recommended either of the following as evidence of rehabilitation: 1) total abstinence for two years with 100 hours of attendance at Alcoholics Anonymous (AA) over a minimum of one year, or 2) total abstinence for two years with satisfactory completion of a minimum of 50 hours of a professionally led, substance abuse treatment program over six-month period. As adequate evidence of reformation, the DOE Psychiatrist recommended two years of abstinence if the

individual completes either of the two rehabilitation programs, or three years of abstinence if he does not.

The individual stopped all consumption of alcohol upon receiving the Notification Letter in April 2004, and has been abstinent since that time. In August 2004, the individual began sessions with a licensed alcohol and drug abuse counselor (Counselor). The individual sees the Counselor three times weekly and had completed 60 hours of treatment at the time of the hearing. The individual began attending AA meetings in September 2004. The individual had attended approximately 20 AA sessions by the time of the hearing but did not yet have an AA sponsor.

## **II. Analysis**

A DOE administrative review proceeding under 10 C.F.R. Part 710 is not a criminal matter, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. *See Personnel Security Hearing*, Case No. VSO-0078, 25 DOE ¶ 82,802 (1996). In this type of case, we are dealing with a different standard designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once DOE Security has made a showing of derogatory information raising security concerns, the burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). This standard implies that there is a strong presumption against the granting or restoring of a security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors. After due deliberation, it is my opinion that the individual's access authorization should not be granted since I am unable to conclude that such

granting would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(d). The specific findings that I make in support of this determination are discussed below.

A. Criteria H & J; Mental Condition, Use of Alcohol

(1) Derogatory Information

I find initially that DOE Security properly invoked Criteria H and J in withholding the individual's security clearance. The record supports the diagnosis of the DOE Psychiatrist that the individual consumed alcohol to a level of Alcohol Dependence during his early 20's when the individual admittedly drank heavily. The individual's heavy drinking culminated in his receiving a DUI in 1991, following an incident in which he totaled his car and left the scene on foot. The DOE Psychiatrist added the modifier "in Sustained Full Remission" to his diagnosis of Alcohol Dependence based upon information provided by the individual that his drinking has diminished in recent years, and that he had not had an alcohol blackout since 2000. See DOE Exh. 3 (Report of DOE Psychiatrist) at 30.

Nonetheless, it is clear from the DOE Psychiatrist's report and testimony that he continues to have substantial concerns regarding the individual's drinking. The DOE Psychiatrist noted that during the psychiatric interview, the individual admitted that in the preceding year there were twelve times that he was intoxicated to a level that it would be illegal to drive, and that of those twelve times there were five times that he was intoxicated to the point that he had a loss of motor skills and common sense. Tr. at 111.<sup>2/</sup> However, the DOE Psychiatrist was particularly concerned with the result of the individual's laboratory blood tests which showed the individual having an elevated GGT liver enzyme reading of 154 on a normal scale of 5-75. See DOE Exh. 3, Attachment. According to the DOE Psychiatrist, "I was 95 percent certain that his elevated GGT was due to his current and habitual use of alcohol." Tr. at 112. The DOE Psychiatrist concluded that the individual still was at a stage of "problematic drinking." Tr. at 114.<sup>3/</sup> Thus, the DOE Psychiatrist believes that while the individual's alcohol dependence is in full remission, he continues to have an illness which causes or may cause a significant defect in his judgment or reliability, until such

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<sup>2/</sup> This description "loss of motor skills and common sense" is based upon the individual's definition of "intoxication" provided during the psychiatric interview. DOE Exh. 3 at 22.

<sup>3/</sup> The DOE Psychiatrist found the individual's elevated GGT very significant: "My problem is that with an elevated GGT when I evaluated him in May, I have to assume that he was drinking a lot. I mean, it's a reasonable inference that he was drinking more than he was telling me to raise his GGT level, [b]ecause GGT goes down in a couple of weeks [o]nce you stop drinking excessive amounts of alcohol." Tr. at 114.

time as he is able to demonstrate adequate evidence of rehabilitation or reformation. DOE Exh. 3 at 33-34; Tr. at 116.

In other DOE security clearance proceedings, Hearing Officers have consistently found that a diagnosis related to excessive alcohol use raises important security concerns. See, e.g., *Personnel Security Hearing*, Case No. VSO-0079, 25 DOE ¶ 82, 803 (1996) (affirmed by OSA, 1996); *Personnel Security Hearing*, Case No. VSO-0042, 25 DOE ¶ 82,771 (1995) (affirmed by OSA, 1996); *Personnel Security Hearing*, Case No. VSO-0014, *aff'd*, *Personnel Security Review*, 25 DOE ¶ 83,002 (1995) (affirmed by OSA, 1995). It was observed in those decisions that the excessive use of alcohol might impair an individual's judgment and reliability, and his ability to control impulses. *Id.* These factors amplify the risk that the individual will fail to safeguard classified matter or special nuclear material.<sup>4/</sup> Accordingly, I will turn to whether the individual has presented sufficient evidence of rehabilitation and reformation to mitigate the security concerns of DOE Security.

## (2) Mitigating Evidence

The individual has presented considerable mitigating evidence relating to his use of alcohol. The individual states that following his interview with the DOE Psychiatrist in May 2003, he reduced his use of alcohol to "about once a month, never to excess." Ind. Exh 9 at 2. The individual did not believe that he had a drinking problem and did not completely abstain from alcohol until April 2004 when he received the Notification Letter, but has been abstinent since that time. Tr. at 14-15. In August 2004, the individual began sessions with a licensed alcohol and drug abuse counselor (Counselor). Tr. at 17-18.<sup>5/</sup> The individual sees the Counselor three times weekly and had completed 60 hours of treatment at the time of the hearing. Tr. at 77. The individual began attending AA meetings in September 2004, and had attended approximately 20 AA sessions over a one-month period at the time of the hearing, but did not yet have an AA sponsor. Tr. at 18; Ind. Exh. 8. Subsequent to the hearing, the individual obtained another laboratory blood test (dated October 22, 2004) showing that the individual's GGT liver enzyme is now in the normal range, 73 on a scale of 2-80. Ind. Exh. 10.

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<sup>4/</sup> The *Adjudicative Guidelines* of 10 C.F.R. Part 710 state the concerns as follows: "Excessive alcohol consumption often leads to the exercise of questionable judgment, unreliability, failure to control impulses, and increases the risk of unauthorized disclosure of classified information due to carelessness." Guideline G, *Adjudicative Guidelines for Determining Eligibility for Access to Classified Information*, 10 C.F.R. Part 710, Appendix B..

<sup>5/</sup> The record indicates that the individual unfortunately did not receive a copy of the DOE Psychiatrist's report until August 2004. Tr. at 17. The individual testified that it was only at that time that he became aware of the DOE Psychiatrist's diagnosis and recommendations for reformation and rehabilitation. *Id.*

The individual's Counselor submitted a Substance Abuse Assessment Report dated October 13, 2004, setting forth his evaluation of the individual and also testified at the hearing. In the report, the Counselor recognizes that the individual was excessive in his use of alcohol during his 20's but finds that "there is no basis on which to conclude that [the individual] is currently suffering from a problem with alcohol dependence or alcohol abuse." Ind. Exh. 1 (Counselor's Report) at 4. Based upon the information supplied by the individual, the Counselor describes the individual's drinking as "sporadic minimal use of alcohol from June 2002 until April 7, 2002, when he made a decision to remain abstinent from alcohol." *Id.* at 2. The Counselor therefore disagrees with the Alcohol Dependence diagnosis of the DOE Psychiatrist and instead diagnosed the individual with Alcohol Abuse without Physiological Dependence in Early Full Remission. *Id.* at 4. During his testimony, the Counselor further explained: "[I]t's very clear that [the DOE Psychiatrist] and I can both give [the individual] a diagnosis, a clinical diagnosis of alcohol dependence, because of [the individual's] past behaviors. But since I've known [the individual], and with the information I've gotten, . . . the tests that I've given [the individual], currently alcohol is not an issue in [his] life, and I don't see that it would be an issue in the future." Tr. at 81.<sup>6/</sup> The Counselor believes that there is an "insignificant" probability that the individual will return to problematic drinking in the future. Tr. at 98.

Finally, I note that the Counselor as well as the individual's supervisors and co-worker believe the individual to be honest, reliable and trustworthy. Tr. at 51-52, 62, 71, 98. The individual appeared to be honest and forthright at the hearing, and I was impressed with his conviction to maintain abstinence and mitigate the security concerns associated with his past use of alcohol. I further commend the individual for the steps he has taken thus far with regard to seeking counseling and attending AA. However, for the reasons below, I am unable to find at this time that the individual has achieved an adequate level of reformation and rehabilitation to overcome the concerns of DOE Security.<sup>7/</sup>

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<sup>6/</sup> The Counselor agreed with the DOE Psychiatrist that the individual met the criteria for alcohol dependence in the past, but stated that "[w]here I disagree is that I think that currently he does not meet the criteria for dependence, . . . I wouldn't have diagnosed him as dependent at this point." Tr. at 87. This marks a fundamental difference between the professional opinion of the Counselor and DOE Psychiatrist. In the opinion of the DOE Psychiatrist, once a person has met the criteria for Alcohol Dependence, it is a diagnosis that the person carries for the rest of their life although it may be in Sustained Full Remission, as he believes the individual to be. Tr. at 131-32.

<sup>7/</sup> The Part 710 regulations were amended in 2001 to state that "[a]ny doubt as to an individual's access authorization eligibility shall be resolved in favor of the national security." 10 C.F.R. § 710.7(a), 66 Fed. Reg. 47061.



It is clear from the record that the individual has a history of excessive alcohol use. While it is apparent that the individual's use of alcohol has diminished over the years, the record supports the opinion of the DOE Psychiatrist that the individual continued to abuse alcohol up until the time of his psychiatric interview in May 2003. This is confirmed by the information provided by the individual during the PSI and psychiatric interview, and by the GGT liver enzyme test taken contemporaneous with the psychiatric interview. As noted above, the individual took another laboratory blood test in October 2004 showing that his GGT liver enzyme is now in the range of normal. However, the October 2004 test result not only corroborates the individual's claim that he has remained abstinent but supports the opinion of the DOE Psychiatrist that the individual's elevated GGT liver enzyme in May 2003 was due to alcohol abuse.

Thus, I find that it is appropriate to defer to the opinion of the DOE Psychiatrist with regard to the showing necessary on the part of the individual to achieve adequate rehabilitation and reformation. In his report, the DOE Psychiatrist recommended either of the following as evidence of rehabilitation: 1) total abstinence for two years with 100 hours of attendance at Alcoholics Anonymous (AA) over a minimum of one year, or 2) total abstinence for two years with satisfactory completion of a minimum of 50 hours of a professionally led, substance abuse treatment program over a six-month period. DOE Exh. 3 at 31-32. As adequate evidence of reformation, the DOE Psychiatrist recommended two years of abstinence if the individual completes either of the two rehabilitation programs, or three years of abstinence if he does not. *Id.* at 32. At the hearing, the DOE Psychiatrist adhered to these requirements even after listening to the testimony of both the individual and Counselor, and reviewing the steps taken by the individual thus far. The DOE Psychiatrist was adamant that the individual remains at this time a "higher than an acceptable risk for getting intoxicated again on a habitual basis." Tr. at 116.

It is apparent that the individual is still in a relatively early stage of his recommended program of rehabilitation, with only six months of sustained abstinence and one month of AA meetings with no sponsor at the time of the hearing. While the Counselor gave the individual a very good prognosis, the individual had not yet completed the Counselor's ten-week treatment program at the time of the hearing. Tr. at 92. Indeed, the Counselor recommended that the individual remain in AA and in an aftercare program for one year following completion of his ten-week treatment program: "[T]he norm is a ten-week out-patient program, and then you come once a week for about a year." Tr. at 103; *see also* Tr. at 95. Consequently, I must find that the individual has not yet overcome the security concerns associated with his past use of alcohol, and I cannot recommend granting the individual a security clearance at this time. *See Personnel Security Hearing*, Case No. VSO-0359, 28 DOE ¶ 82,768 (2000), *aff'd*, *Personnel Security Review*, 28 DOE ¶ 83,016 (2001); *Personnel Security Hearing*, Case No. TSO-0011, 28 DOE ¶ 82,912 (2003); *cf. Personnel Security Hearing*, Case No. TSO-0001, 28 DOE ¶ 82,911 (2003).

## B. Criterion K, Illegal Drug Use

During the PSI, the individual admitted that he experimented with speed and cocaine in high school and in his early 20's, and that he used marijuana on a regular basis for fourteen years, until October 2000 when he was 35 years old.. Tr. at 22-23. Based upon this information, I find that Criterion K was rightly applied in this case. Illegal drug use raises a security concern for the DOE for it reflects a deliberate disregard for state and federal laws prohibiting such use. Tr. at 74. "The drug user puts his own judgment above the requirements of the laws, by picking and choosing which laws he will obey or not obey. It is the further concern of the DOE that the drug abuser might also pick and choose which DOE security regulations he will obey or not obey with respect to protection of classified information." *Personnel Security Hearing*, Case No. VSO-0013, 25 DOE ¶ 82,752 at 85,512 (1995); see *Personnel Security Hearing*, Case No. VSO-0283, 27 DOE ¶ 82,822 (1999).

However, I find that the individual has adequately mitigated this security concern. The individual testified convincingly that he stopped using marijuana in October 2000, and has used no illegal drugs since that time. Tr. at 22-23. In his report, the DOE Psychiatrist stated that "[t]here is no evidence of which I am aware that [the individual] is a user of illegal substances habitually to excess or illegal substance dependent or suffering from illegal substance abuse." DOE Exh. 3 at 32. The DOE Psychiatrist reiterated this opinion at the hearing. Tr. at 115.

## III. Conclusion

As explained in this Decision, I find that DOE Security properly invoked 10 C.F.R. §§ 710.8(h), (j) and (k) in tentatively denying the individual's request for an access authorization. For the reasons I have described above, I find that the individual has failed to sufficiently mitigate the security concerns associated with his past use of alcohol. I am therefore unable to find that granting the individual an access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's request for an access authorization should be denied at this time. The individual may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Fred L. Brown  
Hearing Officer  
Office of Hearings and Appeals

Date: January 14, 20050